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CONCORD, N.H.

Mr. Stanton C. Otis, Right-of-Way Engineer  
Department of Public Works and Highways  
State House Annex  
Concord, New Hampshire

Dear Mr. Otis:

You have advised that under the authority of RSA 236:2, as amended by Laws of 1955, Chapter 292, the Governor and Council being authorized to either conduct hearings themselves as to whether there is occasion for the laying out or alteration of a limited access facility, or appoint a Commission of three persons to do so, has been accustomed to name three members of the Council to hold the hearing.

In some instances only two members have attended. You have asked whether these two members can legally conduct the hearing.

It is my understanding that the appointment of these three members of the Governor and Council has not been as a special committee but has been as a group to act for the Governor and Council. The wording of the statute is that:

"The governor, with the advice of the council,  
on his own motion or a special committee of  
three persons appointed by the governor and  
council for the purpose, may determine, upon  
hearing, whether there is occasion for the  
laying out or alteration of a limited access  
facility including service roads in a location  
proposed by the commissioner of public works  
and highways, . . ."

In such case, the Governor and the Council act independently of each other. Opinion of the Justices, 98 N.H. 530.

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A majority of the Council constitutes a quorum.

"The powers of the council reside in the majority and action taken by any duly convened meeting at which a quorum is present constitutes the action of the council even though supported by less than the majority of the councilors present, provided a majority of the votes cast support the action." Attorney General v. Shepard, 62 N.H. 333; Attorney General v. Penick, 71 N.H. 480; Opinion of the Justices, 93 N.H. 530.

The wording of this statute would appear that the presence of the Governor in such circumstances would be indispensable, and the presence of the majority of the Council, likewise, would be necessary to a valid hearing.

However, if it has been the intention of the Governor and Council to appoint as a special committee under the statute, three persons who are merely incidentally members of the Governor's Council, and they have taken the oath as such committee and have qualified as such committee independently of their status as councilors, a majority of said special committee, or two of the three, may legally conduct a hearing under the authority of RSA 21:15.

Very truly yours,

George F. Nelson  
Assistant Attorney General

GPN:W